RECENT DECISIONS

AGENCY—CONFLICTING INTERESTS—ATTORNEY AT LAW.—The plaintiff, an attorney at law, was employed by the defendant to settle up the affairs of an insolvent partnership in which she was largely interested. The plaintiff also represented creditors of the firm whom he induced to throw the firm into involuntary bankruptcy. The attorney acted with perfect fairness, and informed each party of his relation with the other. After the firm's affairs had been settled, the defendant refused to pay the lawyer his compensation and he sued to recover. *Held*, the plaintiff is entitled to recover. *Eisman* v. *Hazard* (N. Y.), 112 N. E. 722.

The relation of attorney and client is one of agency, and the general rules of that branch of the law govern. It is the first duty of an agent to be loyal to his principal. *Rice* v. *Wood*, 113 Mass. 133; *Hoopes* v. *Burnett*, 26 Miss. 428. Attorneys are officers of the law, as well as agents of their clients, and as such should be especially careful that their honor and good faith are above reproach. *Baker* v. *Humphrey*, 101 U. S. 494. The rule forbidding agents, and others acting in a fiduciary capacity, to become personally interested in the subject of his agency adversely to the principal should be applied with especial strictness to lawyers. *People* v. *Township Board*, 11 Mich. 222. It is not that the relation will be abused, but that it may be abused, which the law frowns upon. *Clute* v. *Barron*, 2 Mich. 192; *St. Louis, etc., Co.* v. *Edison*, 64 Fed. 997; *Cannell* v. *Smith*, 142 Pa. 25, 12 L. R. A. 395.

In these cases of double agency, the agent forfeits his right to compensation. *Harding* v. *Helmer*, 193 Ill. 109. And the principal may disaffirm the transaction between himself and the agent. *Taussig* v. *Hart*, 58 N. Y. 425. Thus where an attorney, consulted about the title to land, buys an outstanding title himself, he holds it in trust for his client. *Eoff* v. *Irvine*, 108 Mo. 378, 38 Am. St. Rep. 609.

Or again, where the attorney has acted unfairly the client may claim all the rights, profits and interests acquired by the attorney which have accrued to his own benefit. *Roberts* v. *Gates*, 146 Mich. 169, 109 N. W. 264. And usually the clients may disaffirm the transactions as between themselves and a third party. *Pilling* v. *Benson*, 34 R. I. 519, 84 Atl. 1005. This is certainly true when there has been collusion between the opposite party and the attorney. *Haverty* v. *Haverty*, 35 Kan. 438, 11 Pac. 364.

However, it is not always improper for an agent to represent conflicting interests. In exceptional cases adverse interests may be adjusted by the same counsel. Thus, for instance, an attorney may act for both borrower and lender. *Jones* v. *Howard*, 99 Ga. 451, 27 S. E. 765. See *Lawall* v. *Groman*, 108 Pa. St. 532, 37 Atl. 98. An attorney for one of the heirs may also be the attorney for the administrator, if he has no other interest in the property. *Jones* v. *Lamont*, 18 Cal. 499, 50 Pac. 766. But it is only where his interest with reference to one party is such as not

to furnish the least temptation to sacrifice the interest of another that he may act for both. The principal case seems very doubtful, and certainly extends the doctrine to its extreme limit.

CONTRACTS—PARTIAL PERFORMANCE—QUANTUM MERUIT.—The plaintiff contracted to drive a well for the defendant, but failed to fully and substantially perform the contract. The defendant having accepted the incomplete work, the plaintiff sued to recover on a *quantum meruit* for services actually performed. *Held,* the plaintiff can recover. *Hartwell* v. *Turner* (Ala.), 71 South. 658.

The principles laid down by the courts in cases of this kind are varied and irreconcilable. That there can be no recovery on the contract is generally conceded; but there is a conflict as to the right of recovery on a *quantum meruit* for the value of services actually performed. Some courts deny the plaintiff's right to recover on a *quantum meruit;* while others hold that he may recover; and, others give a qualified answer, varying accordingly as the contract is general or special, or whether the abandonment of the plaintiff was or was not willful. Thus, a majority of the older cases hold that where the contract is entire that the plaintiff must stand by the contract; and, when the abandonment is due to failure on his part he should not recover, even for the labor actually performed. *McMillan* v. *Vanderlip,* 12 Johns (N. Y.) 165, 7 Am. Dec. 299; *Stark* v. *Parker,* 2 Pick. (Mass.) 267, 13 Am. Dec. 425; *Jennings* v. *Camp,* 13 Johns. (N. Y.) 94, 7 Am. Dec. 367. The majority of the English decisions follow the same doctrine. *Waddington* v. *Oliver,* 2 Bos. & Pul. (N. R.) 61; *Ellis* v. *Hamlen,* 3 Taunt. 52; *Cutter* v. *Powell,* 6 Term. R. 320. That such a rule in its operation may be very unjust is apparent; and this doctrine, emphasizing the technical unity and entirety of contracts, is not favored by many of the modern courts, which hold that the plaintiff may recover on a *quantum meruit* the reasonable value of services actually rendered. *Britton* v. *Turner,* 6 N. H. 481, 26 Am. Dec. 713; *McClay* v. *Hedge,* 18 Iowa 66; *Hillyard* v. *Crabtree's Adm'r,* 11 Tex. 264, 62 Am. Dec. 475; *McDonough* v. *Evans Marble Co.,* 50 C. C. A. 403, 112 Fed. 634; *Watson* v. *Kirby,* 112 Ala. 436, 20 South. 624. Some courts refuse recovery on a *quantum meruit* when the contract is a special one. See *Taft* v. *Montague,* 14 Mass. 282, 7 Am. Dec. 215. And some cases hold that where one willfully defaults in the substantial performance of an entire contract, he cannot recover for part performance, though the other party be not damaged by the default. *Hartman* v. *Meighan,* 171 Pa. 46, 33 Atl. 123; *Kohn* v. *Fendel,* 29 Minn. 470, 13 N. W. 904.

It would seem, though the weight of authority now appears to be against it, that the employee should recover without qualification for the services he actually rendered. He recovers for benefits conferred upon the employer, who should not be allowed to enjoy such benefits without paying their reasonable worth. Nor does such a doctrine contravene public policy; because the employee can gain nothing from the breach of his contract, and such a breach imposes upon him all losses occasioned thereby. And the fullest remedy is afforded the em-